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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/504,821	08/17/2004	Yasumi Takase	Q82677	2037
23373 7590 04/27/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
AHMED, MASUD				
ART UNIT		PAPER NUMBER		
3714				
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04/27/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/504,821

**Applicant(s)**

TAKASE ET AL.

**Examiner**

MASUD AHMED

**Art Unit**

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 6-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant has amended claims 1, 4 and 6-12. Examiner has considered the amendment to the claims very carefully and responded to the applicant's argument below.

### ***Response to Arguments***

1. Applicant's arguments filed on 1/12/2009 have been fully considered but they are not persuasive. Examiner respectfully disagrees with the applicant at least for the following:
2. In response to the applicant's argument on "priority and non-priority data", examiner respectfully disagrees because a priority and non-priority data are nothing but a flag or a name for the saved data for easy retrieval at a later time, Both Toyama and Conner discloses data being saved by graphical icon so they can be easily retrieved and also Conner's data saving management system give user many options to browse, search or flag data accordingly (col 8 lines 19 through col 9 lines 22).
3. Examiner has addressed the amended/clarified part of the claims below incorporating the art of record Conner.

***Claim Rejections - 35 USC § 112***

Examiner has withdrawn 112 second rejection due to the proper amendment by the applicant.

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claim 7** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The methods recited in this claim include the judicial exception of an abstract idea (a control method for a gaming device). No physical transformation is present to establish a practical application of the abstract idea.

As explained in the Interim Guidelines **in view of *in re Bilski***, the first step in determining whether a claim recites patent eligible subject matter is to determine whether the claim falls within one of the four statutory categories of invention recited in 35 USC 101: process, machine, manufacture and composition of matter. The latter three categories define “things” or “products,” while a “process” consists of a series of steps or acts to be performed. For purpose of 101, a “process” has been given a specialized, limited meaning by the courts.

Based on Supreme Court precedent<sup>1</sup> and recent Federal Circuit decision, the Office's guidance to examiners is that a 101 process (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article

or materials) to a different state or thing. ***This is called “machine-or-transformation test”***. If neither of these is met by the claim, the method is not a patent eligible process under 101 and should be rejected as being non-statutory subject matter.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-4 and 6-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stamper et al (US 6820265), in view of Toyama et al (US 20010034267), further in view of Connors (US 6338680).**

**Regarding claims 1-4, 6-10 and 13**, Stamper teaches storing game data into the storage device as being RAM, ROM, flash memory or digital video drive (see col 3, lines 25-28).

Stamper also discloses sharing data between two programs or players and the data being primary data or secondary data that stored in the storage device that are identified by flags or names and these data can interchangeably be accessed and be stored in order of high frequency or mostly used data (see col 3, lines 64-67 and col 4, lines 54-58).

Stamper further teaches the acquiring of the game data from the memory and whether the stored data is player target data to the player or not and control the game software using the saved data in the memory (see col 5, lines 4-17).

Stamper's teachings include memory 16 as being NV-RAM or non-volatile random access memory which is not lost in power failure issue (see col 5, lines 57-63).

Stamper discloses how players can swap programs and choosing the game data primary or secondary to play as the target data and how they can remove or delete data using the system and also how they can distribute or share the game data between various game units using network or internet by giving example of a scenario (see col 3, lines 34-57, col 7, lines 35-67 and col 8, lines 1-57). However Stamper is silent specifically disclosing player names and graphics information associated with the player game data for the better retrieval of the game data. Toyama teaches a video game system where player can create game data and associate the game data with the player name and graphical information for the easy retrieval of the data at a later time (FIG 14-16 and Abstract), a priority data is merely a customization feature or an added design choice how the data will be displayed on the screen to retrieve.

Further applicant has amended the claims to clarify secondary and primary play candidate data, neither Stamper nor Toyama discloses game data being edited or saved in between a game console and a computer or a second device. Connors an art of record clearly discloses game data being selectively saved and transferred between a game console and a personal computer (abstract). A further evidence of game data being edited and saved using graphical icon or names , a game data management

system giving user option to either search through the saved data or scroll, different data's are saved and flagged accordingly (col 8 lines 19 through col 9 lines 22).

Therefore it is evidenced by the disclosure of Conner that user save the game data by naming or prioritizing for easy retrieval. Therefore it would have been obvious to ordinary skilled artisan at the time of invention to include Toyama's name associated graphical icon and Stamper's flagged data to Conner's two system data transfer and managing system to give player better game data retrieval option and use the game data interchangeably between two systems.

**Regarding claims 11-12 and 14-15**, Stamper discloses sharing data between two programs or players and the data being primary data or secondary data that stored in the storage device that are identified by flags or names and these data can interchangeably be accessed and be stored in order of high frequency or mostly used data (see col 3, lines 64-67 and col 4, lines 54-58). However Stamper is silent specifically disclosing player names and graphics information associated with the player game data for the better retrieval of the game data. Toyama teaches a video game system where player can create game data and associate the game data with the player name and graphical information for the easy retrieval of the data at a later time (FIG 14-16 and Abstract), a priority data is merely a customization feature or an added design choice how the data will be displayed on the screen to retrieve. Therefore it would have been obvious to ordinary skilled artisan at the time of invention

to include Toyama's name associated graphical icon to Stamper's flagged data to give player better game data retrieval option.

### ***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MASUD AHMED** whose telephone number is (571)270-1315. The examiner can normally be reached on **Mon-Fri 10:00am-7:00pm, Alt Fri, EST**.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571 272 4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A./  
Examiner, Art Unit 3714

/Peter D. Vo/  
Supervisory Patent Examiner, Art Unit 3714